SUPREME COURT OF THE UNITED STATES.

Nos. 407-418.—October Term, 1927.

H. F. Ferry, Plaintiff in Error,
407 vs.
Alice M. Ramsey, C. L. King, and L. D. Hadley.

Same,
409 vs.
W. O. James, C. L. King, and L. D. Hadley.

Same,
411 vs.
Ramsey Petroleum Company, C. L. King, L. D. Hadley, et al.

Same,
413 vs.
G. L. Ramsey, C. L. King, et al.

Same,
415 vs.
M. R. Chastain, C. L. King, L. D. Hadley, et al.

Same,
417 vs.
A. L. Lloyd, C. L. King, and L. D. Hadley.

C. L. Harris, Executor of the Will of T. A. Kramer, Plaintiff in Error,
408 vs.
Alice M. Ramsey, C. L. King, H. F. Ferry, et al.

Same,
410 vs.
W. O. James, C. L. King, H. F. Ferry, et al.

Same,
412 vs.
Ramsey Petroleum Company, C. L. King, L. D. Hadley, et al.

Same,
414 vs.
G. L. Ramsey, C. L. King, H. F. Ferry, et al.

Same,
416 vs.
M. R. Chastain, C. L. King, H. F. Ferry, et al.

Same,
418 vs.
A. L. Lloyd, C. L. King, H. F. Ferry, et al.

} In Error to the Supreme Court of the State of Kansas.

[May 14, 1928.]

Mr. Justice Holmes delivered the opinion of the Court.

These writs of error are brought by Ferry, formerly a director of the Butler County State Bank, of Kansas, and by the executor

of a deceased director, to set aside judgments against them in suits by depositors in the bank, on the ground that the statutes of Kansas purporting to establish the directors' liability were contrary to the Fourteenth Amendment of the Constitution of the United States. The statutes were upheld by the State Court. 122 Kans. 675. *Ibid.* 691.

The plaintiffs, (the defendants in error,) made deposits in the bank at a time when it was insolvent but had not closed its doors. The statutes under which the directors were held liable to depositors and which are attacked here are Revised Statutes of Kansas, 1923, Chapter 9, ¶¶ 163, 164. The former of these makes it unlawful for any director to assent to the reception of deposits by his bank after he shall have had knowledge of the fact that it is insolvent. The law makes it the duty of the directors to examine into the affairs of the bank, and, if possible, to know its condition, and in case of his failure to do as required, he is to be held to have had knowledge of the insolvency of the bank, and is made 'individually responsible for such deposits so received.' By 9-164, in suits for deposits against officers "the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received . . . shall be prima facie evidence of such knowledge and assent to such deposit . . . on the part of such officer . . . so charged therewith." It is said that 163 denies due process of law by creating a conclusive presumption of knowledge from ignorance and by implying that the director knowingly assented to a deposit that he should not have received, of which in fact he knew nothing. As to 164 it is said that facts are made prima facie evidence of other facts that they have no rational tendency to prove. The law as construed by the Supreme Court of Kansas meets its severest test in the cases against the executor of Kramer, because Kramer, although not so ignorant or incapable of knowledge as thought by the Court of first instance, was seriously ill at the time of the deposits and seemed to have much to be said in his behalf, if the actual state of his knowledge had any relevancy as an excuse.

It is said that the liability is founded by the statute upon the directors' assent to the deposit and that when this is the ground the assent cannot be proved by artificial presumptions that have no warrant from experience. But the short answer is that the statute might have made the directors personally liable to depositors in

every case, if it had been so minded, and that if it had purported to do so, whoever accepted the office would assume the risk. The statute in short imposed a liability that was less than might have been imposed, and that being so, the thing to be considered is the result reached, not the possibly inartificial or clumsy way of reaching it. If without any mention of assent or presumptions or prima facie evidence the statute had said: Every director of a bank shall be personally liable to depositors for every deposit accepted by the bank after it has become insolvent all objections would be met by the answer, You took the office on those terms. The statute would be none the worse if it allowed a defence in the single case of the defendants having made an honest examination and having been led to believe that the bank was solvent. The mention of assent and evidence of knowledge cannot be pressed to conclusions that the statute manifestly does not allow. The conclusions that, as construed by the State Court, it does impose, it imposes however much it may cut down the significance of the assent or knowledge to which it refers. As a matter of law there is nothing new in charging a party with knowledge of what it is his duty to know, in this case the insolvency of the bank, or with assent to deposits that he must expect while the bank's doors remain open. But the essential thing is that whether in a roundabout or a perfectly natural way the statute has said if you take the office you must take the consequences of knowledge whether you have it or not. In most contracts men take the risk of events over which they have imperfect or no control. The acceptance of a directorship is as voluntary an act as a contract.

The Supreme Court of Kansas affirmed judgments against Ferry and reversed judgments in favor of the executor of Kramer based on Kramer's incapacity to know of or assent to the deposits in question and ordered judgments against him. In so doing it violated no provision of the Constitution of the United States.

Judgments affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.